



9
JUL 15 1944

CHARLES ELMORE CROPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943.

FORREST SMITH, State Auditor of the
State of Missouri, *Petitioner*,
vs.
AMERICAN BRIDGE COMPANY, a Cor-
poration, *Respondent*.

NO. 1045.

107

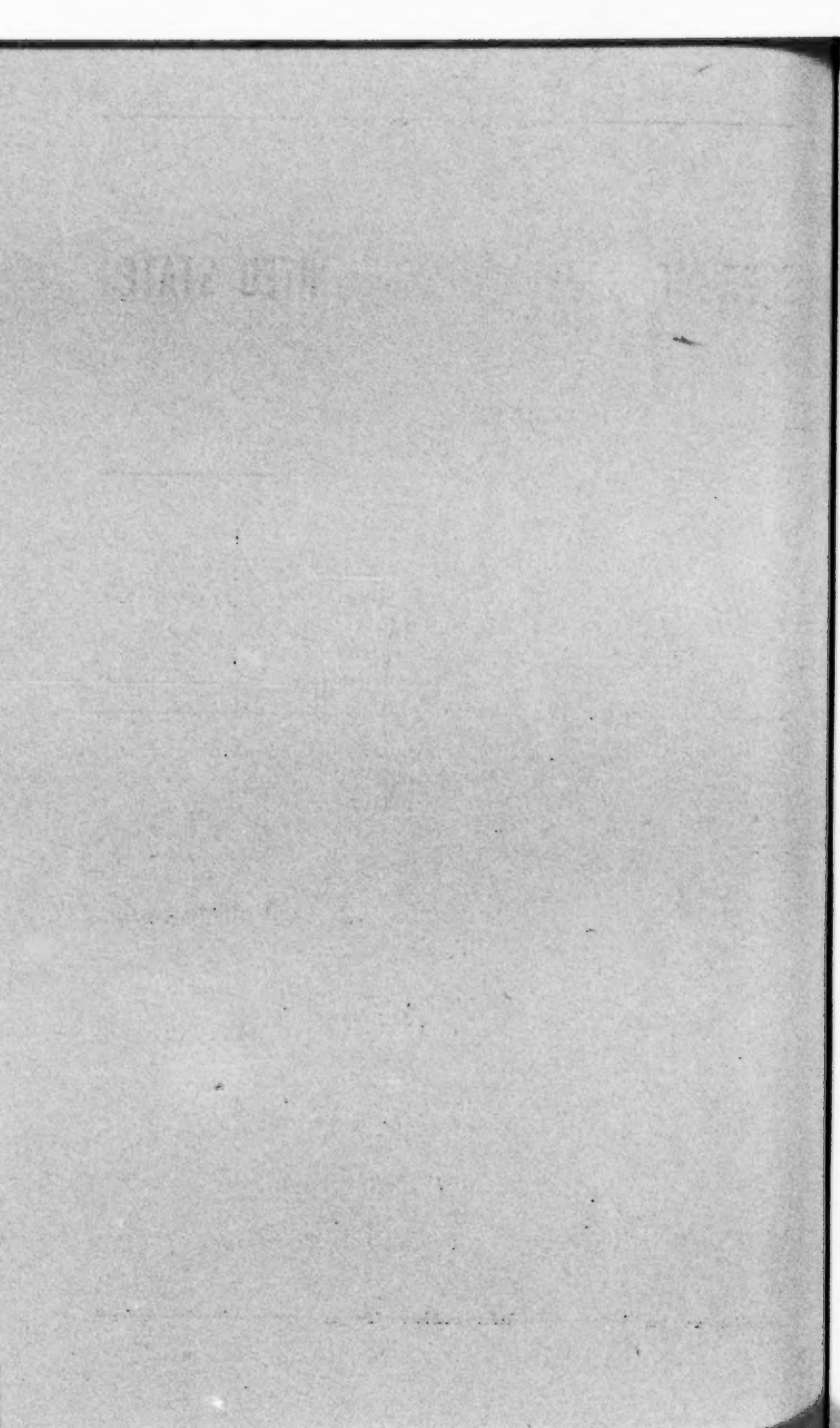
PETITIONER'S REPLY BRIEF.

ROY MCKITTRICK,
Attorney-General of Missouri,
J. W. THURMAN,

TYRE W. BURTON,
Jefferson City, Mo.,

D. A. THOMPSON,
Kansas City, Mo.,

WM. G. MARBURY,
St. Louis, Mo.,
Counsel for Petitioner.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943.

FORREST SMITH, State Auditor of the
State of Missouri, *Petitioner*,

vs.

AMERICAN BRIDGE COMPANY, a Cor-
poration, *Respondent*.

} **NO. 1045.**

PETITIONER'S REPLY BRIEF.

ROY McKITTRICK,
Attorney-General of Missouri,
J. W. THURMAN,

TYRE W. BURTON,
Jefferson City, Mo.,

D. A. THOMPSON,
Kansas City, Mo.,

WM. G. MARBURY,
St. Louis, Mo.,
Counsel for Petitioner.



Table of Cases Cited.

	Page
Bethlehem Motors Corporation et al. v. Flynt, 266 U. S. 421, 41 S. Ct. 571	6
Columbus & Greenville Railroad Company v. W. J. Miller, State Tax Collector, 32 U. S. 69, 51 S. Ct. 393, 75 Law Ed. 861	5
F. S. Royster Guano Co. v. Commonwealth of Virginia, 253 U. S. 412, 40 S. Ct. 560	6
Hartford Steam Boiler Inspection & Insurance Company et al. v. Harrison, 301 U. S. 459, 57 S. Ct. 838	6
Kansas City Southern Railroad Company et al. v. Road Improvement District No. 6 of Little River County, Arkansas, 256 U. S. 658, 41 S. Ct. 604	6
Quaker City Cab Company v. Commonwealth of Pennsylvania, 277 U. S. 389, 48 S. Ct. 553	6



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943.

FORREST SMITH, State Auditor of the
State of Missouri, *Petitioner*,

vs.

AMERICAN BRIDGE COMPANY, a Cor-
poration, *Respondent*.

} **NO. 1045.**

PETITIONER'S REPLY BRIEF.

Counsel for the American Bridge Company in their brief in opposition have attempted to inject for the first time the issue of where the sales involved in the controversy were made. We shall demonstrate to this Honorable Court that the only question before the State Court for decision was whether or not Section 11409 R. S. Missouri 1939, as amended, Laws 1941, page 702, was intended as a blanket exemption of all interstate transactions. In the brief in opposition under "Questions Presented," we find this statement:

"There were two questions at issue before the Missouri Supreme Court; one, whether the sales which were made by American Bridge Company to customers and users within the State of Missouri were sales made in the State of Missouri; two, whether certain types of sales made by American Bridge Company to customers for use and consumption in the State of Missouri were such sales as to be specifically exempted under Section 11409, R. S. Mo. 1939, as amended, Laws of 1941, pages 698 to 714."

The question presented to the State Supreme Court, according to the brief of appellant, page 22, sub-section (2) was:

"The principal questions before the Court in this case are two in number: First, is the appellant engaged in interstate commerce with respect to its sales to customers, users and consumers in the State of Missouri, and, second, are such sales, if in interstate commerce, exempted under the provisions of the Missouri Sales Tax Act of 1939, R. S. Mo. Section 11409, as amended by Laws of 1941, page 702?"

The petitioner herein in his brief to the Missouri Supreme Court at the bottom of page 12 of said brief made this statement:

"The appellant contends that all the sales involved in this case are interstate sales. We concede that said sales are interstate in character."

We submit, therefore, that the only question before the Missouri Supreme Court was whether or not the transactions, being in interstate commerce, were exempt from the Missouri Sales Tax Act by virtue of the provisions of said Section 11409.

In its brief in opposition the Bridge Company argues that statement No. 1 of "Reasons Relied for Allowance of Writ" is incorrect for the reason that the decision of the State Supreme Court involves the construction and meaning of a revenue statute of the state. The argument is devoted almost exclusively to the development of this theory. We submit, therefore, that counsel have missed the point entirely that is being presented by petitioner to this Honorable Court, thus, the cases cited and discussed under heading, "Where a local revenue state law is involved, the U. S. Supreme Court is not interested in review for there is no Federal question" are of no particular significance and are entitled to no weight in the consideration of this case. We think this sufficiently disposes of the cases cited under this point.

Even though the construction and meaning of a revenue statute of the state was involved, yet the construction placed on that statute by the Missouri Supreme Court holding that the statute was "reasonable," in its application is sufficient to raise a Federal question. It is conceded by the petitioner that the construction of a state revenue statute was involved and was for decision by the State Supreme Court, yet the same court was required to determine the reasonableness of the statute and whether or not such a construction would render the statute void as being in violation of the equal protection clause of the 14th amendment to the Federal Constitution. The construction of a state revenue statute is strictly a question for decision by the State Court, and had the State Court not entertained and decided the constitutional question then, of course, this court would have no jurisdiction as no Federal question would be involved. We have demonstrated, however, that the Federal question was entertained and decided by the State Court, and are relying upon this fact to sustain the jurisdiction of this Honorable Court to decide the issues here involved.

THE MISSOURI SUPREME COURT HAVING ENTERTAINED THE CONSTITUTIONAL QUESTION AS RAISED BY THE PETITIONER WHO IS A STATE PUBLIC OFFICER, THEN THIS COURT SHOULD TAKE JURISDICTION AND REVIEW THE OPINION.

The American Bridge Company contends that, since the petitioner herein is a public officer, he does not have such an interest in this cause of action as would authorize him to raise a constitutional question. We take no issue with the rule laid down in the case of Columbus and Greenville Railroad Company v. W. J. Miller, State Tax Collector, 32 U. S. 69, 51 S. Ct. 393, 75 Law Ed. 816, which is the only authority cited in the brief in opposition. The exception to the rule, however, that consideration of the Federal question by a state court suffices to give this Honorable Court jurisdiction to hear and decide the issues, is emphasized. Counsel for the American Bridge Company either

designedly or through inadvertence omitted from the decision a very important sentence. As heretofore stated, the petitioner, in order to sustain the jurisdiction of this honorable Court, takes the position that since the Missouri Supreme Court entertained and decided the Federal question, then jurisdiction of this Honorable Court attaches to review the decision of the State Court. For the purpose of clarity, we desire to quote the portion of the decision relied upon by counsel for the Bridge Company, which includes the omitted sentence. For the convenience of the court, we have emphasized what we consider the pertinent portion of the decision:

"We are not concerned with any question of the state's policy in imposing taxes, or with the various methods employed in the levee district, apart from the application of the Fourteenth Amendment. The question as to the validity of the act of 1926 is raised only by the state tax collector in his official capacity, as one acting solely under the authority of the Legislature whose requirement he contests. The only person taxed by the statute whose rights are before the court is the petitioner, which seeks to uphold the state legislation, which defines its liability and with which it has complied. *The questions which the collector sought to raise under the state Constitution have not been passed upon by the state court.* While, so far as state practice is concerned, the authority of a public officer to assail in the courts of the state the constitutional validity of a state statute is a local question, this fact does not alter the fundamental principle, governing the determination of the federal question by this court, that the protection of the Fourteenth Amendment against state action is only for the benefit of those who are injured through the invasions of personal or property rights or through the discriminations which the amendment forbids. The constitutional guaranty does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law or denied the equal protection of the laws." (Citing cases)

The petitioner points out that while the court announced the general rule with respect to public officers raising the constitutional question, nevertheless they did consider the constitutional question raised by the public officer. In that case the collector had contended that the Act of 1926 relating to taxation of railroads was unconstitutional for certain reasons.

This court at L. c. 394 said:

"As we find no ground for holding the act of 1926 to be invalid under the Federal Constitution, it is unnecessary to consider the questions discussed in relation to the act of 1914."

In the case of Columbus and Greenville Railroad Company v. W. J. Miller, State Tax Collector, *supra*, which first came before the Mississippi Supreme Court, that court did not pass upon the constitutional question raised by the collector, while in the case at bar the Missouri Supreme Court has passed on the constitutional question raised by the petitioner herein, and under such a circumstance the principle announced by the court in the Columbus and Greenville Railroad Company case is not applicable here.

If the Mississippi Supreme Court had passed on the constitutional question raised by the collector in the Columbus & Greenville Railroad Company case, then petitioner submits that this court would not have stated the foregoing principle because it said:

"The questions which the collector sought to raise under the state Constitution have not been passed upon by the state court."

WHERE THE CONSTRUCTION OF A REVENUE ACT INVOLVES A FEDERAL QUESTION THE UNITED STATES SUPREME COURT IS INTERESTED IN REVIEWING SUCH A CONSTRUCTION.

The American Bridge Company takes the position that where a local revenue statute is involved that the United States Supreme Court is not interested in review for there is no Federal question.

The petitioner is in accord with the statement of the American Bridge Company but disagrees in its conclusion that there is no Federal question in this case.

In support of our position in this statement the petitioner calls the court's attention to *Quaker City Cab Company v. Commonwealth of Pennsylvania*, 277 U. S. 389, 48 S. Ct. 553, in which the court held that the United States Supreme Court is not bound by state court's characterization of tax imposed by state law in determining validity under equal protection clause of the Fourteenth Amendment.

The same principle was applied in *Hartford Steam Boiler Inspection and Insurance Company et al. v. Harrison*, 301 U. S. 459, 57 S. Ct. 838. Also in the case of *Bethlehem Motors Corporation et al. v. Flynt*, 266 U. S. 421, 41 S. Ct. 571, the United States Supreme Court held that an increased license fee from corporations not having specified investments within state discriminates against foreign corporations.

Also in the case of *Kansas City Southern Railroad Company et al. v. Road Improvement District No. 6 of Little River County, Arkansas*, 256 U. S. 658, 41 S. Ct. 604, this court held an arbitrary assessment of railroad for road improvement when other property was assessed on basis of area and position denies equal protection of the laws.

In the case of *F. S. Royster Guano Company v. Commonwealth of Virginia* 253 U. S. 412, 40 S. Ct. 560, this court applied the same principle to a state law and held that a classification for tax purposes must rest upon some reasonable grounds of difference.

Respectfully submitted,

ROY MCKITTRICK,

Attorney-General of Missouri,

J. W. THURMAN,

TYRE W. BURTON,

D. A. THOMPSON,

WM. G. MARBURY,

Counsel for Petitioner.

